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IN THE

Supreme Court of the United States

October Term, 1941.

No. 1108.

MYRTLE W. QUINN, as Administratrix of the ESTATE OF WILLIAM E. QUINN, Deceased,

Petitioner,

v.

AMERICAN RANGE LINES, INC., and COLABEE STEAMSHIP COMPANY,

Respondents.

Brief in Opposition to Petition for Writ of Certiorari

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

If this case involves any broad principle of law the Court of Common Pleas No. 3 of Philadelphia County and the Supreme Court of Pennsylvania, after full and judicious deliberation, have failed to perceive it, and petitioner, even now, is unable to state it. Tragic as the circumstances may be, no competent reason appears why this Court should entertain this last, desperate effort to superimpose upon an obviously sudden and unforeseeable occurrence, an illusion of legal significance.

For the purpose of answering the petition herein and the brief in support thereof it is sufficient, we submit, to quote verbatim the "Counter-history of the Case" contained in the brief submitted by respondent to the Supreme Court of Pennsylvania.

> "About December 18, 1938, at Chester, Pennsylvania, plaintiff's intestate, William E. Quinn, and Arthur Mansfield, both marine firemen, joined the crew

of the S. S. 'Colabee,' a coastwise freighter owned and operated by the defendant Colabee Steamship Company (R. 44a, 45a). The two men were 'buddies' who 'hung around with each other' and 'went ashore together' (R. 45a). On December 23, 1941, the vessel docked at Salem, Massachusetts (R. 28a, 31a, 40a) where stevedores began discharging its cargo of coal R. 28a). At 5:00 P. M., the entire crew of the vessel, with the exception of Theodore Parrish, an ordinary seaman (R. 21a), were relieved from duty until 8:00 A. M. the following morning (R. 30a). Parrish was assigned to stand 'gangway watch' on deck from 10:00 P. M. until 6:00 A. M. (R. 21a, 28a, 40a).

"That evening Quinn and Mansfield went ashore. It was after midnight when they returned to the vessel (R. 30a). Parrish, who was standing on the deck of the vessel near the painter's ladder which was used as a gangway (R. 22a, 32a), saw three men whom he later recognized as Quinn, Mansfield and a wiper, Jack Steyer, alight from a taxicab at the head of the dock and walk towards the ship (R. 22a). Quinn and Mansfield appeared to have been drinking intoxicants (R. 30a) and were engaged in the kind of 'a drunken argument that they have all the time on the ships' (R. 22a, 33a), over fifty cents 'for beer for a Dutch treat' (R. 23a, 35a). However, neither required any assistance to climb the almost vertical ladder to the bridge deck of the ship (R. 30a), which was then high above the dock as a result of the discharge of the ship's cargo (R. 31a).

"As Quinn and Mansfield passed him on their way to the messroom, Parrish admonished them to be quiet lest they awaken the officers who were sleeping in the midship house (R. 22a). A few minutes later, hearing the men still arguing in loud tones, Parrish went into the messroom and again urged them to be quiet (R.

23a, 31a, 33a). Mansfield, heeding Parrish's request, made himself a sandwich and sat down at the center table to eat it (R. 23a, 34a, 35a, 36a). Quinn, on the other hand, sought to continue the argument, and going over to where Mansfield was sitting, shoved him and invited him out on deck to fight (R. 23a, 25a, 36a, 37a). This was the first sign of a real quarrel (R. 23a, 33a, 36a, 44a). Mansfield, however, appeared to have no intention of fighting, and ignored Quinn's belligerent conduct (R. 36a, 37a). Thus rebuffed, Quinn poured himself a cup of coffee, and walking to the table on the port side of the room seated himself beside Parrish (R. 35a, 36a, 37a, 40a). There followed what Parrish described as a 'lull' (R. 25a, 37a). Although Quinn continued to grumble somewhat, the argument seemed definitely over (R. 25a, 37a).

"Suddenly Parrish became aware that Mansfield was standing near Quinn, with his hand raised, holding a knife over Quinn's head (R. 24a, 25a, 37a). Unnoticed Mansfield had walked to the buffet and obtained a knife used to cut bread (R. 24a, 25a, 37a). Parrish leaped to his feet and from his awkward position across the table (R. 39a), grabbed Mansfield by the shoulders (R. 24a, 37a, 38a). Thereupon Mansfield stepped back (R. 38a).

"Quinn, who had rolled his body from beneath the uplifted knife, rose to his feet (R. 37a, 38a). Parrish, no longer able to maintain his grip on Mansfield, his position having been rendered even more awkward when Mansfield stepped back, released his hold, as also did Steyer (R. 24a, 38a, 39a). Furthermore, the danger seemed to be past (R. 39a). At this moment Quinn said, 'You fight with a knife, you dirty son-of-a-bitch' (R. 44a). With this Mansfield lunged forward and stabbed Quinn with such speed that Parrish did not even see the movement of his hand (R. 24a, 38a). Gasping, "You stuck me,' Quinn fell to the floor (R. 24a)."

It is submitted that there is no special or important reason for granting certiorari in this case. The Supreme Court of Pennsylvania did not decide any federal question of substance not heretofore decided by this Court, nor did it decide any such question in a way not in accord with the applicable decisions of this Court [Rule 38, par. 5 (a)].

It is submitted, therefore, that the petition for certiorari should be denied.

Respectfully submitted,

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Attorneys for Respondents.